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1  
2 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
3 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v.  
4 Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston  
5 Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025  
6 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Aquino v. University of  
7 Washington, PAB No. D93-163 (1995).

## 8 9 **II. FINDINGS OF FACT**

10 2.1 Appellant Paula Baker was a Program Manager/Technical Specialist 3 and permanent  
11 employee for Respondent Department of Community, Trade and Economic Development  
12 (DCTED). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules  
13 promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the  
14 Personnel Appeals Board on August 4, 2000.

15  
16 2.2 By letter dated June 26, 2000, Busse Nutley, Director of the Office of Community  
17 Development, informed Appellant of her dismissal effective June 26, 2000. Ms. Nutley charged  
18 Appellant with neglect of duty, inefficiency, insubordination and gross misconduct. Ms. Nutley  
19 specifically alleged that Appellant failed to complete work outlined in a May 5, 2000 memorandum,  
20 failed to meet established deadlines, and failed to follow written directives regarding work  
21 priorities.

22  
23 2.3 Appellant began her employment with Respondent in 1993. As a Program  
24 Manager/Technical Specialist 3 in the Community Development Block Grant (CDBG) Unit,  
25 Appellant was in a senior level position responsible for performing advanced level work related to  
26 contract management for local governments. Contract management functions include contract

1 negotiation, preparing detailed work plans, ensuring compliance with applicable statutes and  
2 regulations, providing technical assistance, and conducting on-site visits to review files and monitor  
3 contract progress. Program Managers are also responsible for making progress entries on a  
4 Program Monitoring Report (PMR) for each of their assigned contracts. The PMR lists all contracts  
5 assigned to a Program Manager and contains the following information: contract number,  
6 jurisdiction, project monitoring date, end date, contract amount, balance and a brief narrative of  
7 action taken. Each Project Manager is responsible for managing an average of 30 to 35 contracts.  
8 In 1998, Appellant was responsible for approximately 40 contracts.

9  
10 2.4 Steven Buxbaum, Managing Director of the CDBG Unit, began supervising Appellant in  
11 July 1998. Mr. Buxbaum previously addressed issues with Appellant regarding her continued  
12 difficulties with prioritizing and completing work assignments, her failure to meet deadlines, and  
13 his concerns that she was performing little management activity on her contracts. On December 2,  
14 1998, Mr. Buxbaum provided Appellant with a corrective action memo for her failure to complete  
15 an assignment, and the deadline was extended to December 22, 1998 and later extended to January  
16 7, 1999. On January 12, 1999, Mr. Buxbaum gave Appellant a formal letter of reprimand for her  
17 failure to accurately complete the work assignment that was the subject of the December 2  
18 corrective action memo. Mr. Buxbaum informed Appellant that her continued failure to meet  
19 minimum work expectations would result in formal disciplinary action.

20  
21 2.5 Respondent subsequently suspended Appellant for 14 days for the causes of neglect of duty,  
22 inefficiency, insubordination and gross misconduct effective March 21, 2000 through April 3, 2000.  
23 The March 16 suspension letter from Director Martha Choe, resulted from Appellant's failure to 1)  
24 follow supervisory directives; 2) develop and complete a "new applicant handbook" assignment in a  
25 timely manner; 3) provide requisite medical verification for two absences; 4) clear messages from  
26 her voicemail box to create space so callers could leave new messages. The suspension letter

1 directed Appellant to pay attention to the details of her work, to complete all assignments and to  
2 cooperate with her supervisor and follow his directives. Ms. Choe also directed Appellant to make  
3 space available on her voicemail for incoming calls due to continued concerns that callers were  
4 unable to leave her messages. Baker v. Dep't Community, Trade and Economic Development,  
5 PAB No. SUSP-00-0017 (2001).

6  
7 2.6 Appellant agreed to copy her voicemail messages to a recorder and delete them from her  
8 voicemail box. The agency provided Appellant with a recording machine to assist Appellant in  
9 meeting the directive.

10  
11 2.7 Appellant requested reasonable accommodation for a medical condition that was  
12 exacerbated by the commute from her residence in Seattle to her workstation in the DCTED office  
13 in Olympia. On March 10, 2000, Ms. Choe authorized Appellant to telecommute from her  
14 residence on Wednesdays in response to her request. As a part of the telecommuting agreement,  
15 Ms. Choe directed Appellant to check in with her supervisor upon starting work and to email him  
16 upon checking out at the end of the day. She also directed Appellant to email her supervisor a  
17 "work report record" or a "work performed away from office" form outlining her work priorities  
18 and objectives for her workday. This directive was in effect as long as Appellant continued to  
19 telecommute.

20  
21 2.8 Appellant was scheduled to return to work from her suspension on April 4, however, due to  
22 illness, Appellant did not report to work until April 6, 2000. Upon her return to work, Appellant  
23 was responsible for managing 14 contracts.

1 **IDIS Assignment**

2 2.9 By memo dated April 5, 2000, Mr. Buxbaum directed all Project Managers in the  
3 Community Development Block Grant Unit to complete an IDIS [Integrated Disbursement  
4 Information System] assignment. The IDIS assignment was critical to the department in preparing  
5 for a conversion to a new fund distribution system. Completion of the assignment would enable the  
6 CDBG Unit to ensure that enough funds would be held in reserve to reimburse clients for costs  
7 incurred on their contracts during the conversion to the new IDIS system. The assignment required  
8 Project Managers to update contract information on their PMRs by the close of business on April  
9 11, 2000. The time necessary to research and update the information was approximately two hours.  
10 Mr. Buxbaum informed his staff that the project was a “priority” and asked that he be contacted  
11 with any questions.

12  
13 2.10 On April 5, 2000, Mr. Buxbaum sent Appellant an email welcoming her back to the office.  
14 Mr. Buxbaum reminded Appellant of the IDIS assignment and of her responsibility to update the  
15 information on the PMR by April 11, 2000. On April 6, Appellant responded that the April 11  
16 deadline did not allow her sufficient time to complete the IDIS assignment and she requested  
17 additional time to complete the project. Appellant’s request for an extension was denied.

18  
19 2.11 All Project Managers completed the IDIS assignment by April 11 with the exception of  
20 Appellant. On April 18, 2000, Mr. Buxbaum emailed Appellant directing her to work on and  
21 complete the IDIS assignment on the following day, her telecommuting day. Mr. Buxbaum  
22 provided Appellant with a hard copy of her PMR and directed that at minimum, she handwrite the  
23 updated information on each of her contracts for the month beginning May 12, 2000.

24  
25 2.12 On April 21, 2000, Appellant faxed a copy of the PMR related to the IDIS assignment to a  
26 fax number she knew was no longer assigned to the unit. As a result, Mr. Buxbaum did not receive

1 a copy of the PMR from Appellant on April 26, 2000. The PMR submitted by Appellant, which  
2 contained Appellant's handwritten notes, was incomplete and did not contain the information  
3 requested by Mr. Buxbaum on April 5.

#### 4 5 **Work Priorities Memo**

6 2.13 On May 5, 2000, Steve Wells, Director of the Local Government Division, issued Appellant  
7 a memo outlining the following work priorities:

8 Task #1. Complete Integrated Disbursement Information System (IDIS) Project  
9 Activity Summary forms for all of your assigned contracts by 4:00 p.m. Monday,  
10 May 8, 2000.

11 Task #2. Complete currently scheduled monitoring of Pend Oreille County on  
12 Thursday, May 11, 2000. A final draft of your monitoring report should be  
available for your supervisor's review by no later than June 1, 2000.

13 Task #3. Update Project Monitoring Report (PMR) including brief project  
14 descriptions, brief statement of current issues and project status, accurate  
15 monitoring dates (sic). A fully updated and accurate PMR is due to be provided  
directly to your supervisor by the end of the workday on May 16, 2000.

16 Task #4. Complete onsite monitoring of Lewis County and the City of Toledo by  
17 June 6, 2000. As per program policy, final written monitoring reports are due to  
18 the jurisdiction within three weeks of the date that the onsite monitoring occurred.  
Three days should be allowed for your supervisor's review and approval of the  
final draft of your monitoring report.

19 Task #5. All other normal duties related to your job will continue as appropriate  
20 such as the timely completion of reimbursement requests and other administrative  
21 responsibilities.

22 2.14 During the meeting, Mr. Wells and Appellant clarified Appellant's work priorities and what  
23 her focus should be for the following 30 days. Because Appellant had made allegations of  
24 discrimination, harassment and retaliation, she was in the process of completing a lengthy  
25 declaration. As a part of the memo, Appellant agreed not to work on this "administrative" project  
26

1 (her declaration) unless she had authorization from Mr. Wells. Appellant agreed that she could  
2 accomplish the tasks within the 30-day deadline.

3  
4 2.15 On May 11, 2000, Appellant and Mr. Wells met again to discuss the May 5 work priorities  
5 memo. During the meeting, Appellant indicated that she needed more time to complete some of the  
6 tasks. Mr. Wells agreed to establish new deadlines based on dates Appellant agreed to as follows:

7 Task #2. Set a new monitoring date of Pend Oreille County by May 17.

8 Task #3. Update Project Monitoring Report by May 18, 2000.

9 Task #4. Find out by May 12, whether she could complete the onsite monitoring  
10 of Lewis County and City of Toledo on June 6.

11  
12 2.16 On May 18, 2000, Appellant emailed both Mr. Buxbaum and Mr. Wells and informed them  
13 she had updated the PMR for all her contracts. Appellant wrote that she had also been working on  
14 the administrative assignment and that she had scheduled the City of Toledo for an onsite visit on  
15 June 8, 2000. However, Appellant scheduled this onsite visit despite her knowledge that she had a  
16 Board of Industrial Insurance Appeals conference on June 8, which she understood could not be  
17 rescheduled.

18  
19 2.17 The Project Monitoring Report completed by Appellant contained no current updates for  
20 Pend Oreille County and the information in the PMR remained unchanged. Appellant also failed to  
21 contact the county to establish a new monitoring date for an on-site visit. In fact, the previous  
22 project monitoring date of May 11, 2000 remained unchanged.

1 2.18 The PMR also reflects that Appellant failed to update 12 of 13 contracts, and that she failed  
2 to provide the information requested by Mr. Buxbaum: a brief project description, a brief statement  
3 of current issues, project status and accurate monitoring dates.

4  
5 2.19 On June 5, Appellant notified Mr. Buxbaum for the first time that she had a conflict with the  
6 June 8 onsite visit to the City of Toledo because she had to appear at the BIIA conference despite  
7 her attempts to reschedule it. Appellant did not inform Mr. Buxbaum that she had knowledge on  
8 February 9, 2000 of the BIIA conference or that she had received two subsequent written  
9 notifications of the conference. Furthermore, Appellant failed to inform Mr. Wells by May 12  
10 whether the monitoring for Lewis County and the City of Toledo could be completed on June 6 and  
11 she failed to complete the onsite visits.

12  
13 **Directive to make space available on her voice-messaging box**

14 2.20 On May 16, 2000, Mr. Buxbaum learned that a caller had been unable to leave Appellant a  
15 voicemail message because her voice messaging system was full. Mr. Buxbaum called Appellant's  
16 number and confirmed that callers could not leave Appellant messages. Appellant later admitted  
17 that her voicemail box was full, but she asserted that she had been unable to use the recorder  
18 provided by the agency to copy her archived voicemail messages. Appellant had not informed staff  
19 of any difficulties with using the recorder. Appellant failed to comply with Ms. Choe's previous  
20 directive to keep her voicemail system cleared of excessive messages.

21  
22 **Directive to use Work Report forms**

23 2.21 Between April 6, 2000 and mid-June 2000, Appellant failed to comply with the directive  
24 that she email Mr. Buxbaum with her work priorities and objectives and with work report forms for  
25 work she performed while telecommuting.



1 2.22 Busee Nutley, Director of Office of Community Development, was Appellant's appointing  
2 authority. After reviewing the charges against Appellant, Ms. Nutley spoke with Appellant prior to  
3 making a determination of misconduct. However, Ms. Nutley was not convinced with the  
4 explanations Appellant provided as to why she did not comply with the directives of the May 5  
5 memo or with the directives previously given by Ms. Choe. Furthermore, Ms. Nutley was not  
6 aware that Appellant had any administrative assignments that could have prevented her from  
7 meeting the work deadlines.

8  
9 2.23 Ms. Nutley ultimately determined that Appellant engaged in misconduct because she did not  
10 comply with the list of work priorities and failed to comply with specific directives given by Ms.  
11 Choe by not keeping her voicemail clear or completing the work report forms. Ms. Nutley  
12 concluded that Appellant neglected her duty, was inefficient and insubordinate. Ms. Nutley  
13 believed that Appellant's misconduct negatively affected the agency because the core function of  
14 the CDBG unit was to ensure that small communities received complete contract monitoring and  
15 money distribution and that these duties were not being adequately or efficiently performed by  
16 Appellant. Furthermore, Ms. Nutley was concerned because clients were unable to communicate  
17 with Appellant via voicemail. Therefore, Ms. Nutley concluded that Appellant's misconduct rose  
18 to the level of gross misconduct.

19  
20 2.24 When considering the level of discipline, Ms. Nutley reviewed Appellant's personnel  
21 record, which reflected a history of progressive discipline for similar misconduct. Ms. Nutley  
22 concluded that Appellant continued to display an unacceptable pattern of behavior by not  
23 performing her work and flagrantly disregarding supervisory directives. Although Ms. Nutley  
24 considered options other than dismissal, she felt the previous suspension was unsuccessful in  
25 correcting Appellant's behavior, and she believed that any more intermediary steps would be  
26

1 ineffective. Ms. Nutley ultimately concluded that Appellant's lack of work ethic warranted a severe  
2 disciplinary sanction and that dismissal was the appropriate sanction.

### 3 4 **III. ARGUMENTS OF THE PARTIES**

5 3.1 Respondent argues that despite supervisory attempts to get Appellant to comply with the  
6 requirements of the May 5 work memo, Appellant failed to consistently meet performance  
7 expectations, failed to meet deadlines, and failed to follow supervisory instructions. Respondent  
8 argues that the department had an obligation to ensure that the work was accomplished and  
9 attempted to assist Appellant in meeting her work obligations. Respondent argues that Appellant  
10 had sufficient time to perform the assignments within the timeframes given. Respondent asserts  
11 that it implemented a program of progressive discipline, including a two-week suspension, which  
12 failed to correct Appellant's behavior. Respondent argues that Appellant was extended every  
13 opportunity to comply with the performance expectations of her position and the directives of her  
14 supervisor. Respondent argues that Appellant's failure to perform even the minimum requirements  
15 of her position negatively impacted the agency's clients. Respondent argues that Appellant  
16 neglected her duty, was inefficient and insubordinate. Respondent further asserts that Appellant's  
17 misconduct rises to the level of gross misconduct and that the dismissal should be upheld.

18  
19 3.2 Appellant asserts that she was going through significant emotional issues, including  
20 posttraumatic stress, which culminated in her inability both physically and emotionally to finish  
21 some of her assigned duties. Appellant asserts that she made an accommodation request and that  
22 the burden was on the agency to assist her through the accommodation process. Appellant asserts  
23 that the department, nevertheless, gave her little assistance to help her accomplish her tasks.  
24 Appellant asserts that although the timing of some of the assignments may have been late, it was  
25 because she was not given enough time to complete them and because she suffered from serious  
26 medical pain. Appellant asserts, however, that all her work was completed. Appellant also

1 questions the timing of her dismissal action, asserting that the agency fired her during the middle of  
2 accommodation procedures rather than allowing the accommodation process to run its course.  
3 Appellant asserts that other actions could have been considered and that dismissal was too severe.  
4

#### 5 IV. CONCLUSIONS OF LAW

6 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
7 herein.  
8

9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
10 the charges upon which the action was initiated by proving by a preponderance of the credible  
11 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
12 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
13 Corrections, PAB No. D82-084 (1983).  
14

15 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
16 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
17 of Social & Health Services, PAB No. D86-119 (1987).  
18

19 4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the  
20 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of  
21 effective operations as measured by a comparison of production with use of resources, using some  
22 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*  
23 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).  
24  
25  
26

1 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
2 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
3 Dep't of Social & Health Services, PAB No. D94-025 (1995).

4  
5 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
6 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

7  
8 4.7 Appellant was aware of the performance expectations of her position and she was clearly  
9 aware of her duty to follow the directives set forth in the May 5 memo. Respondent has proven that  
10 Appellant failed to complete the tasks assigned in the May 5 memo and failed to produce the work  
11 within the prescribed timeframes, failed to timely and completely submit the IDIS assignment, and  
12 to provide her supervisor with work reports documenting work performed while telecommuting.  
13 Appellant was given numerous directives to comply with the May 5 memo and to keep her  
14 voicemail box clear. Respondent has met its burden of proving that Appellant's misconduct  
15 constitutes a neglect of duty. Respondent also has proven that Appellant had sufficient time in  
16 which to complete her work and that Appellant was inefficient in the use of her available work time.  
17 Furthermore, her refusal to comply with supervisory directives constitutes insubordination.

18  
19 4.8 Although it is not appropriate to initiate discipline based on prior formal and informal  
20 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
21 level of the sanction that should be imposed here. Aquino v. University of Washington, PAB No.  
22 D93-163 (1995).

23  
24 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to  
25 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
26 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to

1 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
2 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
3 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4  
5 4.10 The issues involved in this disciplinary action are very similar to the issues previously  
6 addressed by Respondent in informal and formal disciplinary action taken against Appellant:  
7 failing to meet work deadlines, producing poor quality work performance, and failing to follow  
8 clear directives such as clearing her voicemail box. Respondent provided extensive evidence of its  
9 repeated attempts to assist Appellant to improve her performance. Furthermore, there is no credible  
10 evidence that Respondent failed to address Appellant's accommodation needs or to show that  
11 Appellant was unable to perform the essential duties of her position.

12  
13 4.11 Appellant was in a highly professional position and as such must be held to a higher  
14 standard of conduct and accountability. Appellant's refusal to meet even the minimum expectations  
15 of her position shows a serious lack of regard for her job and for the local governments impacted by  
16 her inaction in managing their contracts. Respondent has proven that termination is the appropriate  
17 sanction, and the appeal should be denied.

18  
19 **V. ORDER**

20 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Paula Baker is denied.

21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

22 WASHINGTON STATE PERSONNEL APPEALS BOARD

23  
24 \_\_\_\_\_  
Gerald L. Morgen, Vice Chair

25  
26 \_\_\_\_\_  
Leana D. Lamb, Member